

REMARKS

Claims 1-44 were pending in the application. In the Office Action dated January 19, 2007, Claims 1-44 were rejected. Claims 30-33 and 38 were rejected under 35 USC § 112 ¶ 2 as being indefinite. Claims 1-22, 24, 26-30, 32, 33, 35, 38, 39, 41, 43, and 44 were rejected under 35 USC § 103(a) as being unpatentable over Applicant Admitted Prior Art (AAPA) in view of Cusson, et al. in U.S. Patent No. 6,487,641 (“Cusson”). Claim 34 was rejected under 35 USC § 103(a) as being unpatentable over AAPA in view of Cusson and in further view of Official Notice. Claims 31, 36, 40, and 43 were rejected under 35 USC § 103(a) as being unpatentable over AAPA in view of Cusson and in further view of Ward in U.S. Patent No. 6,526,411. Claim 37 was rejected under 35 USC § 103(a) as being unpatentable over AAPA in view of Cusson and in further view of Ward with Official Notice.

Claims 30 and 38 have been amended, as suggested

Claims 30-33 and 38 were rejected under 35 USC § 112 ¶ 2 as being indefinite. Claims 30 and 38 have been amended, as suggested, in order to overcome this rejection. Applicants therefore respectfully suggest that the rejection is no longer proper and request that it be withdrawn.

Claims 1-22, 24, 26-30, 32, 33, 35, 38, 39, 41, 43, and 44 were rejected under 35 USC § 103(a) as being unpatentable over AAPA in view of Cusson. Applicants respectfully point out that the language of the rejection was for Anticipation under 35

USC § 102 instead of obviousness under 35 USC § 103(a). Nevertheless, the context suggests an obviousness rejection, and Applicants will argue based on that understanding.

Applicants respectfully traverse this rejection. Furthermore, as to independent claims 1, 23, 30, 33, 39, and 43, neither reference teaches or suggests “*generating a corresponding representation from said data*” nor of “*transmitting said representation*”. Of significance here is a distinction between an “*identification*” or “*identifier*” of a work and a “*representation*” of such or of a data stream. A song title is an identifier of a work. It exists independently of the work itself. The same can be said of a Universal Resource Locator (URL) for a web page. But starting at line 4 of page 14 in the instant specification, different methods of generating a representation of a data stream are disclosed. Notably, the representation generated by all of the methods disclosed are dependent upon the actual data stream. Thus, starting at line 8 of page 14, is one example: “*The analysis module may be configured to generate a representation of the received work using the psychoacoustic properties of the audio content of the received work. Such methods are known in the art. For example, the analysis module may generate feature vectors as disclosed in US Patent #5,918,223 to Blum, et al., which is assigned to the same assignee of the present disclosure and incorporated by reference as though fully set forth herein.*”

The AAPA mentions using song titles, which are work identifications and not representations. It nowhere mentions generating a representation of a data stream, and

even if it did, it would not be enabling, since there is no mention or suggestion what a representation could possibly be or how it could be generated (or, indeed, that it was generated in the first place). Cusson is no more help. It involves a mid-tier web server (see Abstract), and thus it uses URLs.

Furthermore, both song titles and URLs are independent of the data stream or work, and are thus not “*generated*”. Rather, they are detected instead. Detection is not generation, esp. here where different methods of generation are disclosed. Neither is anywhere close to analyzing the “*psychoacoustic properties of the audio content of the received work*” nor of “*generat[ing] feature vectors as disclosed in US Patent #5,918,223*”. All of the representations disclosed in the Detailed Description are dependent upon and generated from the requisite data streams. Thus, these elements are missing from the combination.

Furthermore, despite assertions of the examiner, the Cusson reference is not analogous art. The present claims involve identifying works based on matching representations of the works to representations generated from an input data stream. Cusson involves caching of web content based on URLs in a mid-tier Web server (see Abstract). The search key for the present claims is the generated representation. The search key for Cusson is an identification of web content, i.e., its URL. The only thing that the two have in common is the Internet and caching. But the Internet is implicated in a sizable of the applications being currently examined in numerous art areas, and caching is also spread out over a large number of art areas. But also note that the URL

in Cusson is utilized to retrieve the corresponding web content, whereas the representation in the present claims is utilized to match the data stream to a work. The purpose is not (as disclosed here) to actually download the matching work.

Furthermore, the justification for combining the two references has no relevance to the present invention or disclosure thereof. These claims are not oriented towards determining when a miss occurred repetitively, but rather towards identifying works based on matching a representation of them to a representation of a data stream. Indeed, it seems to be suggested that Cusson teaches cache promotion, but while that may be involved in dependent claims, it has no relevance to the independent claims here. Indeed, the present invention teaches away from the type of cache promotion taught by Cusson by suggesting a least recently used algorithm to discard cache entries.

Applicants therefore respectfully submit that significant elements are missing from the combined references and that the combination is inappropriate, therefore that a prima facie case for obviousness for these claims has not been made, that the rejection of these claims for this reason is thus improper, and request that this rejection of these claims be withdrawn. The remainder of the claims are dependent upon these claims, and should be allowable for the same reasons.

Furthermore, as to the rejection of claims 3, 4, 24, 32, 35, 38, 41, and 44, applicants are unable to find in the cited area of the specification where the claimed elements are found. It would be appreciated if the area of the specification where

these elements assertively were found would be quoted by the examiner in her next Office Action. Otherwise, applicants respectfully assert that these added elements have not been found in the cited references.

Furthermore, as to claims 7-21, there was no mention of specific techniques of generating representations of a data stream. Yet, it is asserted that all of the various claimed techniques of generating representations were obvious, but this is a bald assertion of obviousness, without any documentation or substantiation. The fact that the present Detailed Description discloses such does not make them obvious, but rather, that asserting them to be obvious is using prohibited 20/20 hindsight.

Since all of the dependent claims are dependent upon the independent claims discussed above, and for all these additional reasons, applicants further respectfully submit that a prima facie case of obviousness has not been made, that the rejection of these claims is improper, and request that these rejections be withdrawn.

Claim 34 was rejected under 35 USC § 103(a) as being unpatentable over AAPA in view of Cusson and in further view of Official Notice. Applicant respectfully traverses this rejection. Furthermore, this claim is dependent upon an independent claim discussed above, and should be allowable for the same reasons. Furthermore, the justification for the Official Notice took its justification from the claim itself, and thus, utilized prohibited hindsight. Furthermore, the reason that repeated segments are reported in the present invention is precisely the opposite of that in the justification. In the present disclosure, their being repeated is what is

significant, and that is why they are reported. In the justification, the justification is to limit the amount of work done. Thus, the present invention, and the AAPA, teach away from the justification cited for making this combination. Furthermore, no reason was given to believe that this technique would have been obvious to anyone in the prior art, and thus, Official Notice is inappropriate. For all these reasons, applicants respectfully submit that a prima facie case of obviousness has not been made, that the rejection is improper, and request that this rejection be withdrawn.

Claims 31, 36, 40, and 43 were rejected under 35 USC § 103(a) as being unpatentable over AAPA in view of Cusson and in further view of Ward. Applicant respectfully traverses this rejection. Furthermore, these claims are dependent upon claims discussed above, and should be allowable for the same reasons. Furthermore, applicants are unable to find the missing elements in the cited section of the Ward reference. The examiner is invited to quote the portions of that reference that he believes disclose the missing claimed elements, but until she does so, applicants submit that these are significant elements that are still missing from the cited combination. Furthermore, the entire justification for making the asserted combination was that it would be obvious to do so. The MPEP requires that the justification be specific, and not general and conclusory, as was done here. For all these reasons, applicants respectfully submit that a prima facie case of obviousness has not been made, that the rejection is improper, and request that this rejection be withdrawn.

Claim 37 was rejected under 35 USC § 103(a) as being unpatentable over AAPA in view of Cusson and in further view of Ward with Official Notice. Applicant respectfully traverses this rejection. Furthermore, there is no mention of what the Official Notice was. Under MPEP rules, it must be a specific finding, and this was not specific. Furthermore, the combination adding this fourth reference was justified essentially based on the text of the rejected claim. In other words, the cited justification or motivation was that it was claimed in this claim. But that involves prohibited hindsight for the combination, and thus is not proper. For all these reasons, applicants respectfully submit that a prima facie case of obviousness has not been made, that the rejection is improper, and request that this rejection be withdrawn.

Applicants respectfully requests that this Amendment be entered. All claims should be allowable. Applicants further respectfully requests that a timely Notice of Allowance be issued in this case.

If the Examiner has any questions regarding this response or the Application in general, the Examiner is invited to telephone the undersigned at 775-586-9500.

Respectfully submitted,
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